

# Chapter 454

## 1979 REPLACEMENT PART

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## TREATMENT WORKS

**454.010 Definitions for ORS 454.010 to 454.040.** As used in ORS 454.010 to 454.040, unless the context requires otherwise:

(1) "Construction" means any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(2) "Industrial user" means a recipient of treatment works services for any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources.

(3) "Municipality" means any county, city, special service district or other governmental entity having authority to dispose of or treat or collect sewage, industrial wastes or other wastes, or any combination of two or more of the foregoing acting jointly.

(4) "Replacement" means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

(5) (a) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes, of a liquid nature, necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of residues resulting from such treatment.

(b) In addition to the definition contained in paragraph (a) of this subsection, "treatment works" means any other method or system for

preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. [1973 c.101 §2]

**454.020 Compliance with state and federal standards; enforcement.** The Environmental Quality Commission may require each user of the treatment works of a municipality to comply with the toxic and pretreatment effluent standards and inspection, monitoring and entry requirements of the Federal Water Pollution Control Act, as enacted by Congress, October 18, 1972, and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. The commission may institute actions or proceedings for legal or equitable remedies to enforce such compliance. [1973 c.101 §5; 1979 c.284 §146]

**454.030 Rates and charges to meet costs of treatment works; use of funds; enforcement.** (1) A municipality is authorized to adopt a system of charges and rates to assure that each recipient of treatment works services within the municipality's jurisdiction or service area will pay its proportionate share of the costs of operation, maintenance and replacement of any treatment works facilities or services provided by the municipality.

(2) A municipality is authorized to require industrial users of its treatment works to pay to the municipality that portion of the cost of construction of the treatment works which is allocable to the treatment of such industrial user's wastes. The Department of Environmental Quality is authorized to determine whether the payment required of the industrial user for the portion of the cost of the construction of the treatment works is properly allocable to the treatment of the industrial user's wastes.

(3) A municipality is authorized to retain the amounts of the revenues derived from the payment of costs by industrial users of its treatment works services and expend such revenues, together with interest thereon, for:

(a) Repayment to applicable agencies of government of any grants or loans made to the municipality for construction of the treatment works; and

(b) Future expansion and reconstruction of the treatment works; and

(c) Other municipal purposes.

(4) A municipality shall keep records, financial statements and books regarding its rates and charges and amounts collected on account of its treatment works and how such revenues are allocated. The Department of Environmental Quality may inspect such records, financial statements and books, audit them, or cause them to be audited, at such intervals as deemed necessary.

(5) In the event a municipality fails, neglects or refuses when required by the Environmental Quality Commission to adopt the system of charges and rates authorized by this section, or fails, neglects or refuses to comply with ORS 454.010 to 454.060, the commission may adopt a system of charges and rates as provided for in subsection (1) of this section and collect, administer and apply such revenues for the purposes of subsection (3) of this section.

(6) In lieu of proceeding in the manner set forth in subsection (5) of this section, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance with, or restrain violations of, ORS 454.010 to 454.060. [1973 c.101 §3; 1979 c.284 §147]

**454.040 Determination of costs payable by users.** In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or, if applicable, the Environmental Quality Commission shall consider the strength, volume, types and delivery flow rate characteristics of the waste; the nature, location and type of treatment works; the receiving waters; and such other factors as deemed necessary. [1973 c.101 §4]

**454.050 Rules.** The Environmental Quality Commission may adopt, modify or repeal rules, pursuant to ORS 183.310 to 183.500, for the administration and implementation of ORS 454.010 to 454.060. [1973 c.101 §6]

**454.060 Powers in addition to other municipal or commission powers.** The powers and authority granted to a municipality or the Environmental Quality Commission by ORS 454.010 to 454.050 are in addition to, and not in lieu of, or derogation of any other powers and authority vested in a municipality or the commission pursuant to law. [1973 c.101 §7]

## FINANCING OF DISPOSAL SYSTEMS

**454.105 Definitions for ORS 454.105 to 454.175.** As used in ORS 454.105 to 454.175, unless the context requires otherwise:

(1) "Disposal system" means that term as defined in ORS 468.700.

(2) "Municipality" means a city, county, county service district, sanitary authority or sanitary district. [Formerly 449.405]

**454.115 Authority over disposal systems.** (1) In order to facilitate the abatement, elimination or control of the pollution of waters and streams, any municipality may:

(a) Construct, reconstruct, improve, extend, repair, equip or acquire disposal systems, within or without the municipality.

(b) Accept grants or loans or other aid from the United States or any other source.

(c) Enter into all necessary agreements.

(d) Issue revenue bonds of the municipality without limitation as to amount.

(2) The powers conferred by ORS 454.105 to 454.175 are in addition to and supplemental to the powers conferred by any other law and not in substitution for any right, powers or privileges vested in a municipality. [Formerly 449.410]

**454.125 Bond election.** Before any bonds may be issued under ORS 454.115, their issuance must first be approved by a majority of the electors voting on the proposition at either a general election or at a special election, to be called, held and conducted in the same manner as special elections on the proposition of issuing general obligation bonds. [Formerly 449.415]

**454.135 Bonds issued to finance disposal system.** (1) The bonds issued under ORS 454.115 shall be payable from that portion of the earnings of the disposal system of the municipality which is pledged to their payment, and they shall have a lien of such priority on the earnings as is specified in the proceedings providing for their issuance.

(2) The governing body may provide that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to their payment of principal, interest and security, to such other bonds of the municipality as are designated.

(3) The bonds shall bear such date, may be issued in such amounts, may be in such denominations, may mature in such amounts and at such time, shall be payable at such place, may be redeemable, either with or without premium, or nonredeemable, may carry such registration privileges, and may be executed by such officers and in such manner as is prescribed by the governing body.

(4) In case any of the officers whose signatures appear on the bonds or coupons cease to be officers before delivery of the bonds, the signatures, whether manual or facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if such officers had remained in office until delivery.

(5) The bonds so issued shall bear interest at a rate to be fixed by the governing body, not to exceed six percent per annum, payable at times to be fixed by the governing body.

(6) The bonds shall be sold at public sale for not less than the principal amount thereof plus accrued interest. However, they may be sold at private sale to the United States or to the State of Oregon or any of their agencies or instrumentalities, for not less than the principal amount thereof plus accrued interest.

[Formerly 449.420]

**454.145 Bond content.** Bonds issued under ORS 454.115 or the proceedings of the governing body authorizing their issuance may contain such covenants as the governing body considers advisable concerning:

(1) Rates or fees to be charged for services rendered by the disposal system, the revenue of which is pledged to the payment of such bonds.

(2) Deposit and use of the revenue of such disposal system.

(3) Issuance of additional bonds payable from the revenue of such disposal system.

(4) Rights of the bondholders in case of default in the payment of the principal or interest on the bonds, including the appointment of a receiver to operate such disposal system. [Formerly 449.425]

**454.155 Refunding bonds.** (1) The governing body of every municipality by ordinance or resolution without prior approval of the electors may issue and exchange or sell refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds, including interest thereon, if any, in arrears or about to become due.

(2) All other relevant provisions in ORS 454.105 to 454.175 pertaining to revenue bonds shall be applicable to the refunding revenue bonds, including their terms and security, the rates and other aspects of the bonds. [Formerly 449.430]

**454.165 Joint agreements for construction and financing of disposal systems.** (1) Any two, or more, municipalities, counties or other political subdivisions, notwithstanding any limitation or provision of municipal charter to the contrary, may, through their respective governing bodies, enter into and perform such contracts and agreements as they consider proper for or concerning the planning, construction, lease or other acquisition and the financing of the disposal system and the maintenance and operation thereof.

(2) Municipalities, counties or other political subdivisions so contracting with each other may also provide in any contract or agreement for a board, commission or such other body as their governing bodies consider proper for the supervision and general management of the disposal system and for the operation thereof, and may prescribe its powers and duties and fix the compensation of the members thereof.

[Formerly 449.435]

**454.175 Agreements with industrial establishment.** When determined by its governing body to be in the public interest and necessary for the protection of the public health, any municipality may enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of the disposal system to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing, including payment of principal and interest charges, and of operating and maintaining the disposal system serving such industrial establishment. [Formerly 449.440]

## DISPOSAL OF SEWAGE

**454.205 "Municipality" defined.** As used in ORS 454.205 to 454.255, "municipality" includes an incorporated city, a metropolitan service district, a sanitary district, a sanitary authority, a county service district, or any other special district authorized to treat and dispose of sewage. [1973 c.213 §2]

**454.215 Authority over disposal systems.** (1) Any municipality may own, acquire, construct, equip, operate and maintain, either within or without its statutory or corporate limits, in whole or in part, disposal systems with all appurtenances necessary, useful or convenient for the collection, treatment and disposal of sewage. The municipality may acquire by gift, grant, purchase or condemnation necessary lands and rights of way therefor, either within or without its statutory or corporate limits. For the purpose of acquiring property for such uses, the municipality may invoke and shall have the rights, powers and privileges granted to public corporations under the provisions of existing or future laws pertaining to this subject.

(2) The authority given by ORS 454.205 to 454.255 shall be in addition to, and not in derogation of any power existing in the municipality under any constitutional, statutory or charter provisions now or hereafter existing. [1973 c.213 §3]

**454.225 Rates and charges; collection.** The governing body of the municipality may establish just and equitable rates or charges to be paid for the use of the disposal system by each person, firm or corporation whose premises are served thereby, or upon subsequent service thereto. If the service charges so established are not paid when due, the amounts thereof, together with such penalties, interests and costs as may be provided by the governing body of the municipality may be recovered in an action at law, or may be certified and presented after July 15 and on or before the following July 15 to the tax assessor of the county in which the municipality is situated and be by him assessed against the premises serviced on the next assessment and tax roll prepared after July 15. Once the service charges are certified and presented to the assessor, the payment for the service charges must be made to the tax collector pursuant to ORS 311.370. Such payment shall be made by the person responsible for the delinquent service charge or by the municipality who has

received payment for the delinquent service charge. These charges shall thereupon be collected and paid over in the same manner as other taxes are certified, assessed, collected and paid over. [1973 c.213 §4; 1979 c.350 §19]

**454.235 Election; bonds; when election required; compelling elections; when bonds can be ordered sold.** (1) The governing body of the municipality, by proposed charter amendment or ordinance, may refer the question of acquiring and constructing the disposal system to a vote of its qualified electors, and after approval thereof by a majority of such electors, may authorize the issuance of and cause to be issued bonds of the municipality for such purposes. The bonds may be general obligation, limited obligation or self-liquidating in character in a sum not more than the amount authorized at such election and shall be subject to ORS 454.205 to 454.255. The bonds may provide for payment of principal and interest thereon from service charges to be imposed by the governing body for services to be extended through employment and use of the disposal system. If service charges are imposed to be paid as provided in ORS 454.225, such portion thereof as may be deemed sufficient shall be set aside as a sinking fund for payment of interest on the bond and the principal thereof at maturity.

(2) (a) When the Environmental Quality Commission enters an order pursuant to ORS 183.310 to 183.500 that requires the acquisition or construction of a disposal system in a municipality, the governing body of the municipality shall refer to its qualified electors the question of a bond issue in an amount sufficient to finance the necessary acquisition or construction of such disposal system. The election shall be held within one year of the date the order of the commission is entered.

(b) If, within eight months after the order of the commission, the governing body of the municipality has not called an election in compliance with paragraph (a) of this subsection, the commission may apply to the circuit court of the county in which the municipality is located, or to the Circuit Court of Marion County for an order compelling the holding of an election.

(c) If the electors do not approve the bond issue, submitted pursuant to paragraph (a) or (b) of this subsection, the commission may apply to the circuit court of the county in which the municipality is located or to the Circuit Court of Marion County for an order

directing that self-liquidating bonds of the municipality be issued and sold pursuant to ORS 454.205 to 454.255, and directing that the proceeds be applied to the acquisition or construction of a disposal system required to comply with the final order of the commission. If the court finds that the disposal system required by the final order of the commission is necessary under the rules or standards of the commission, it shall issue an order directing that such bonds be issued and sold without voter approval in such an amount as the court finds necessary to acquire or construct such disposal system, and that the proceeds be applied for such purposes.

(d) Any court proceeding authorized by paragraphs (b) and (c) of this subsection shall be advanced on the court docket for immediate hearing. [1973 c.213 §5]

**454.245 Serial bonds; term and content; interest; amount.** (1) The governing body of the municipality may determine the maturities and tenor of the bonds issued under ORS 454.235. However, the bonds shall be serial in character in accordance with present or future provisions of law or the charter. They shall be payable in not to exceed 40 years from the date of issuance thereof, and shall be sold at a price to net the municipality not less than the par value thereof with accrued interest. They shall bear interest at not to exceed six percent per annum payable semi-annually.

(2) The amount of any bonds issued under ORS 454.205 to 454.255 shall not be within any limitation of indebtedness fixed by law or charter, but shall be in addition thereto. [1973 c.213 §6, 7]

**454.255 Plans and cost estimates; examination by electors.** Before calling any election under ORS 454.235, the governing body of the municipality shall cause to be prepared plans, specifications and estimates of costs of any proposed disposal system to be voted upon, which may be examined by any qualified elector of the municipality. [1973 c.213 §8]

454.315 [1973 c.424 §2; repealed by 1975 c.167 §13]

454.325 [1973 c.424 §3; repealed by 1975 c.167 §13]

454.335 [1973 c.424 §4; repealed by 1975 c.167 §13]

454.345 [1973 c.424 §5; repealed by 1975 c.167 §13]

454.355 [1973 c.424 §6; repealed by 1975 c.167 §13]

## CONSTRUCTION OF SEWAGE SYSTEMS

**454.405 Definitions for ORS 454.405, 454.425 and 468.742.** As used in ORS 454.405, 454.425 and 468.742, the term:

(1) "Construct" includes a major modification or addition.

(2) "Person" means any person as defined in ORS 174.100 but does not include, unless the context specifies otherwise, any public officer acting in his official capacity or any political subdivision, as defined in ORS 237.410. [Formerly 449.390; 1975 c.248 §1]

454.415 [Formerly 449.395; 1975 c.248 §2; renumbered 468.742]

**454.425 Surety bond required; exception; action on bond.** (1) Every person proposing to construct facilities for the collection, treatment or disposal of sewage shall file with the Department of Environmental Quality a surety bond of a sum required by the Environmental Quality Commission, not to exceed the sum of \$25,000. The bond shall be executed in favor of the State of Oregon and shall be approved as to form by the Attorney General.

(2) A subsurface sewage disposal system designed for and used in not to exceed a four-family dwelling shall be exempt from the provision of subsection (1) of this section. The commission may adopt rules exempting other facilities from the requirements of subsection (1) of this section.

(3) The department may permit the substitution of other security for the bond, in such form and amount as the commission considers satisfactory, the form of which shall be approved by the Attorney General.

(4) The bond or other security shall be forfeited in whole or in part to the State of Oregon by a failure to follow the plans and specifications approved by the department in the construction of the sewerage system or by a failure to have the system maintained and operated in accordance with the rules and orders of the commission. The bond or other security shall be forfeited only to the extent necessary to secure compliance with the approved plans and specifications or the rules and orders of the commission. The commission shall expend the amount forfeited to secure compliance with the approved plans and specifications or the rules and orders of the commission.

(5) When a failure as described in subsection (4) of this section occurs and part of the

bond or other security remains unforfeited, any person, including a public person or body, who has suffered any loss or damage by reason of the failure shall have a right of action upon the bond or other security and may bring a suit or action in the name of the State of Oregon for his use and benefit. This remedy shall be in addition to any other remedies which the person who suffered loss or damage may have against the person who has failed to follow the approved plans and specifications or to comply with the rules and orders of the commission.

(6) When the ownership of the sewerage system is acquired or its operation and maintenance assumed by a city, county, sanitary district, or other public body, the bond or other security shall be considered terminated and void as security for the purposes of this section and shall be returned to the person who filed the security. [Formerly 449.400; 1975 c.248 §3]

#### **STATE AID FOR CONSTRUCTION OF MUNICIPAL SEWAGE TREATMENT WORKS**

**454.505 Definitions for ORS 454.505 to 454.535.** As used in ORS 454.505 to 454.535, unless the context requires otherwise:

(1) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, and the inspection and supervision of the construction of sewage treatment works.

(2) "Eligible project" means a project for construction of sewage treatment works:

(a) For the approval of the Department of Environmental Quality is required under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapter 468;

(b) Which is, in the judgment of the Environmental Quality Commission eligible for federal pollution abatement assistance, whether or not federal funds are then available therefor;

(c) Which conforms with applicable rules of the commission; and

(d) Which is, in the judgment of the commission, necessary for the accomplishment of the state's policy of water purity as stated in ORS 468.710.

(3) "Federal pollution abatement assistance" means funds available to a municipality, either directly or through allocation by the state, from the Federal Government as grants for construction of sewage treatment works pursuant to the Federal Water Pollution Control Act of 1956 (P.L. 84-660) as amended, or pursuant to any other federal act or program.

(4) "Municipality" means any county, city, special service district or other governmental entity having authority to dispose of sewage, industrial wastes or other wastes, any Indian tribe or authorized Indian tribal organization, or any combination of two or more of the foregoing acting jointly, in connection with an eligible project.

(5) "Sewage treatment works" means any facility for the purpose of treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances. [Formerly 449.455]

**454.515 Grants authorized; criteria considered.** (1) The State of Oregon may make grants, as funds are available, to any municipality to assist the municipality in the construction of sewage treatment works.

(2) The Environmental Quality Commission shall be the agency for administration of funds granted by this state pursuant to subsection (1) of this section.

(3) In allocating state grants under ORS 454.505 to 454.535, the commission shall give consideration to the following criteria:

(a) Public benefits to be derived from the construction;

(b) Ultimate cost of constructing and maintaining the sewage treatment works;

(c) Public interest in and public necessity for the sewage treatment works;

(d) Adequacy of the provisions made or proposed by the municipality for assuring proper and efficient operation and maintenance of the sewage treatment works after the completion of construction thereof;

(e) The municipality's readiness to start construction, including financing and planning; and

(f) The municipality's financial need.

(4) The commission shall establish a list of priority projects based upon the criteria established in subsection (3) of this section and the list shall be used as the basis for allocation of funds granted under ORS 454.505 to 454.535. However, a project shall not be placed on the list of priority projects if the total cost to the Sewage Treatment Works Construction Account established by ORS 454.535 of all such projects on the list of priority projects would exceed the funds available in the Sewage Treatment Works Construction Account.

[Formerly 449.465]

**454.525 Contracts with municipalities.** (1) The Environmental Quality Commission and any municipality may enter into contracts with each other concerning eligible projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include the following provisions:

(a) An estimate of the reasonable cost of the eligible project as determined by the commission.

(b) An agreement by the municipality:

(A) To proceed expeditiously with, and complete, the project in accordance with plans approved by the department;

(B) To commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the sewage treatment works without the approval of the commission;

(C) To operate and maintain the sewage treatment works in accordance with applicable provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapter 468 and with the rules of the commission;

(D) To secure approval of the commission before applying for federal assistance for pollution abatement, in order to maximize the amounts of such assistance received or to be received for all projects in Oregon; and

(E) To provide for the payment of the municipality's share of the cost of the project.

(2) The commission may adopt rules necessary for making and enforcing contracts hereunder and establishing procedures to be fol-

lowed in applying for state grants authorized by ORS 454.515 as shall be necessary for the effective administration of ORS 454.505 to 454.535.

(3) All contracts entered into pursuant to this section shall be subject to approval by the Attorney General as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant on vouchers approved by the commission. [Formerly 449.475]

**454.535 Sewage Treatment Works Construction Account.** There is established in the General Fund of the State Treasury a Sewage Treatment Works Construction Account. All moneys in the Sewage Treatment Works Construction Account are appropriated continuously for and shall be used by the Environmental Quality Commission in carrying out the purposes of ORS 454.505 to 454.535. [Formerly 449.485]

## REGULATION OF SUBSURFACE SEWAGE DISPOSAL

**454.605 Definitions for ORS 454.605 to 454.745.** As used in ORS 454.605 to 454.745, unless the context requires otherwise:

(1) "Absorption facility" means a system of open-jointed or perforated piping, alternate distribution units or other seepage systems for receiving the flow from septic tanks or other treatment units and designed to distribute effluent for oxidation and absorption by the soil within the zone of aeration.

(2) "Alternative sewage disposal system" means a system incorporating all of the following:

(a) Septic tank or other sewage treatment or storage unit; and

(b) Disposal facility or method consisting of other than an absorption facility but not including discharge to public waters of the State of Oregon.

(3) "Building sewer" means that part of the system of drainage piping which conveys sewage into a septic tank, cesspool or other treatment unit that begins five feet outside the building or structure within which the sewage originates.

(4) "Cesspool" means a receptacle which receives the discharge of sewage from a sanitary drainage system and which is so designed and constructed as to separate solids from

liquids, digest organic matter during a period of detention and allow the liquids to flow into the soil within the zone of aeration through perforations in the side wall of the receptacle.

(5) "Construction" includes installation, alteration, repair or extension.

(6) "Effluent sewer" means that part of the system of drainage piping that conveys treated sewage from a septic tank or other treatment facility into an absorption facility.

(7) "Governmental unit" means the state or any county, municipality or other political subdivision, or any agency thereof.

(8) "Nonwater-carried sewage disposal facility" includes, but is not limited to, pit privies, vault privies and chemical toilets.

(9) "Public health hazard" means a condition whereby there are sufficient types and amounts of biological, chemical or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses, bacteria, parasites, toxic chemicals and radioactive isotopes.

(10) "Seepage pit" is a type of absorption facility which is a covered pit with open-jointed lining through which septic tank effluent may seep or leach into surrounding ground.

(11) "Septic tank" means a watertight receptacle which receives the discharge of sewage from a sanitary drainage system and which is so designed and constructed as to separate solids from liquids, digest organic matter during a period of detention and allow the liquids to discharge into the soil outside of the tank through an absorption facility.

(12) "Sewage" means water-carried human and animal wastes, including kitchen, bath and laundry wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration, surface waters or industrial waste as may be present.

(13) "Sewage disposal service" means:

(a) The construction of subsurface sewage disposal systems, alternative sewage disposal systems or any part thereof.

(b) The pumping out or cleaning of subsurface sewage disposal systems, alternative sewage disposal systems or nonwater-carried sewage disposal facilities.

(c) The disposal of materials derived from the pumping out or cleaning of subsurface sewage disposal systems, alternative sewage disposal systems or nonwater-carried sewage disposal facilities.

(d) Grading, excavating and earth-moving work connected with the operations described in paragraph (a) of this subsection, except streets, highways, dams, airports or other heavy construction projects and except earth-moving work performed under the supervision of a builder or contractor in connection with and at the time of the construction of a building or structure.

(e) The construction of drain and sewage lines from five feet outside a building or structure to the service lateral at the curb or in the street or alley or other disposal terminal holding human or domestic sewage.

(14) "Subsurface sewage disposal system" means a cesspool or the combination of a septic tank or other treatment unit and effluent sewer and absorption facility.

(15) "Zone of aeration" means the unsaturated zone that occurs below the ground surface and the point at which the upper limit of the water table exists. [1973 c.835 §208; 1975 c.167 §1; 1977 c.828 §1]

**454.610 Regulation of grey water discharge.** (1) As used in this section "grey water" means any household sewage other than toilet and garbage wastes, including shower and bath waste water, kitchen waste water and laundry wastes.

(2) Nothing in ORS 454.605 to 454.745 except ORS 454.645 shall prohibit the discharge of grey water if:

(a) Soil and site conditions for such grey water conform to the rules of the Department of Environmental Quality regarding standard subsurface sewage disposal systems except that such system may use two-thirds the normal size surface area for a drainfield and shall be preceded by a pretreatment facility such as, but not limited to, a septic tank; or

(b) Such grey water is discharged into an existing subsurface sewage system which is functioning satisfactorily or a public sewage system which serves the dwelling from which such grey water is derived. [1977 c.523 §6]

**454.615 Standards for sewage disposal systems and disposal facilities.** The Environmental Quality Commission shall by September 1, 1975, adopt by rule standards

which:

(1) Prescribe minimum requirements for the design and construction of subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities or parts thereof including grading, excavating and earth-moving work connected therewith, and allow for use of alternative systems and component materials consistent with the minimum requirements. Requirements prescribed under this section may vary in different areas or regions of the state.

(2) Prescribe minimum requirements for the operation and maintenance of subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities or parts thereof.

(3) Prescribe requirements for the pumping out or cleaning of subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities or parts thereof, for the disposal of material derived from such pumping out or cleaning, for sewage pumping equipment, for sewage tank trucks and for the identification of sewage tank trucks and workmen.

(4) Prescribe requirements for handling kitchen, bath and laundry wastes as opposed to human and animal wastes which recognize the possibility for separate treatment of different types of waste. [1973 c.835 §209; 1975 c.167 §2]

**454.625 Rules.** In accordance with the applicable provisions of ORS 183.310 to 183.500, the Environmental Quality Commission shall adopt such rules as it considers necessary for the purpose of carrying out ORS 454.605 to 454.745. [1973 c.835 §210]

**454.635 Notice of violation; service; request for hearing; conduct of hearing; order.** (1) Whenever the Department of Environmental Quality has reasonable grounds for believing that any subsurface sewage disposal system, alternative sewage disposal system or nonwater-carried sewage disposal facility or part thereof is being operated or maintained in violation of any rule adopted pursuant to ORS 454.625, it shall give written notice to the person or persons in control of such system or facility.

(2) The notice required under subsection (1) of this section shall include the following:

(a) Citation of the rule allegedly violated;

(b) The manner and extent of the alleged violation; and

(c) A statement of the party's right to request a hearing.

(3) The notice shall be served personally or by registered or certified mail and shall be accompanied by an order of the department requiring remedial action which, if taken within the time specified in the order, will effect compliance with the rule allegedly violated. The order shall become final unless a request for hearing is made by the party receiving the notice within 10 days from the date of personal service or the date of mailing of the notice.

(4) The form of petition for hearing and the procedures employed in the hearing shall be consistent with the requirements of ORS 183.310 to 183.500 and shall be in accordance with rules adopted by the Environmental Quality Commission.

(5) The order shall be affirmed or reversed by the commission after hearing. A copy of the commission's decision setting forth findings of fact and conclusions shall be sent by registered or certified mail to the petitioner or served personally upon him. An appeal from such decision may be made as provided in ORS 183.480 relating to a contested case.

[1973 c.835 §211; 1975 c.167 §3]

**454.645 Enforcement when health hazard exists.** (1) Whenever a subsurface sewage disposal system, alternative sewage disposal system or a nonwater-carried sewage disposal facility or part thereof presents or threatens to present a public health hazard creating an emergency requiring immediate action to protect the public health, safety and welfare, the Department of Environmental Quality may institute an action. The action may be commenced without the necessity of prior administrative procedures, or at any time during such administrative proceedings, if such proceedings have been commenced. The action shall be in the name of the State of Oregon and may petition for a mandatory injunction compelling the person or governmental unit in control of the system or facility to cease and desist operation or to make such improvements or corrections as are necessary to remove the public health hazard or threat thereof.

(2) Cases filed under provisions of this section or any appeal therefrom shall be given preference on the docket over all other civil

cases except those given an equal preference by statute.

(3) Nothing in this section is intended to prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances or for recovery of damages brought by private persons or by the state on relation of any person. [1973 c.835 §212; 1975 c.167 §4; 1979 c.284 §148]

**454.655 Permit required for construction; application; time limit; special application procedure for septic tank installation on parcel of 10 acres or more.** (1) Except as otherwise provided in ORS 454.675, without first obtaining a permit from the Department of Environmental Quality, no person shall construct or install a subsurface sewage disposal system, alternative sewage disposal system or part thereof. However, a person may undertake emergency repairs of a subsurface or alternative sewage disposal system without first obtaining a permit if he obtains a permit within three days after the emergency repairs are begun.

(2) A permit required by subsection (1) of this section shall be issued only to a person licensed under ORS 454.695, or to an owner or contract purchaser in possession of the land. However, a permit issued to an owner or contract purchaser carries the condition that the owner or purchaser or his regular employes or a person licensed under ORS 454.695 perform all labor in connection with the construction of the subsurface or alternative sewage disposal system.

(3) The applications for a permit required by this section must be accompanied by the nonrefundable permit fee prescribed in ORS 454.745.

(4) After receipt of an application and permit fee, subject to ORS 454.685, the department shall issue a permit if it finds that the proposed construction will be in accordance with the rules of the Environmental Quality Commission. No permit shall be issued if a community or area-wide sewerage system is available which will satisfactorily accommodate the proposed sewage discharge.

(5) (a) Unless weather conditions or distance and unavailability of transportation prevent the issuance of a permit within 20 days of the receipt of the application and permit fee by the department, the department shall issue or deny the permit within 20 days after such date. If such conditions prevent issuance or denial within 20 days, the depart-

ment shall notify the applicant in writing of the reason for the delay and shall issue or deny the permit within 60 days after such notification.

(b) If within 20 days of the date of the application the department fails to issue or deny the permit or to give notice of conditions preventing such issuance or denial, the permit shall be considered to have been issued.

(c) If within 60 days of the date of the notification referred to in paragraph (a) of this subsection, the department fails to issue or deny the permit, the permit shall be considered to have been issued.

(6) Upon request of any person, the department may issue a report, described in subsection (1) of ORS 454.755, of evaluation of site suitability for installation of a subsurface or alternative sewage disposal system. The application for such report must be accompanied by the nonrefundable fee prescribed in ORS 454.755.

(7) With respect to an application for a permit for the construction and installation of a septic tank and necessary effluent sewer and absorption facility for a single family residence or for a farm related activity on a parcel of 10 acres or more described in the application by the owner or contract purchaser of the parcel, the Department of Environmental Quality:

(a) Within the period allowed by paragraph (a) of subsection (5) of this section after receipt by it of the application, shall issue the permit or deliver to the applicant a notice of intent to deny the issuance of the permit;

(b) In any notice of intent to deny an application, shall specify the reasons for the intended denial based upon the rules of the Environmental Quality Commission for the construction and installation of a septic tank and necessary effluent sewer and absorption facility or based upon the factors included in paragraphs (a) to (j) of subsection (2) of ORS 454.685;

(c) Upon request of the applicant, shall conduct a hearing in the manner provided in subsections (4) and (5) of ORS 454.635 on the reasons specified in a notice of intent to deny the application with the burden of proof upon the department to justify the reasons specified; and

(d) In the case of issuance of a permit, may include as a condition of the permit that no other permit for a subsurface sewage dis-

posal system or alternative sewage disposal system shall be issued for use on the described parcel while the approved septic tank, effluent sewer and absorption facility are in use on the described parcel. [1973 c.835 §213; 1974 s.s. c.30 §2; 1975 c.167 §5; 1975 c.794 §1]

**454.657 Variance; conditions; hearing.** (1) After hearing the Environmental Quality Commission may grant to applicants for permits required under ORS 454.655 specific variances from the particular requirements of any rule or standard pertaining to subsurface sewage disposal systems for such period of time and upon such conditions as it may consider necessary to protect the public health and welfare and to protect the waters of the state, as defined in ORS 468.700. The commission shall grant such specific variance only where after hearing it finds that strict compliance with the rule or standard is inappropriate for cause or because special physical conditions render strict compliance unreasonable, burdensome or impractical.

(2) The commission shall adopt rules for granting variances from rules or standards pertaining to subsurface sewage disposal systems in cases of extreme and unusual hardship. The rules shall provide for consideration of the following factors in reviewing applications for variances due to hardship:

(a) Advanced age or bad health of applicants;

(b) Relative insignificance of the environmental impact of granting a variance; and

(c) The need of applicants to care for aged, incapacitated or disabled relatives.

(3) The department shall strive to aid and accommodate the needs of applicants for variances due to hardship.

(4) Variances granted due to hardship may contain conditions such as permits for the life of the applicant, limiting the number of permanent residents using a subsurface sewage disposal system and use of experimental systems for specified periods of time. [1975 c.309 §2; 1979 c.591 §4]

**454.660 Delegation of variance powers; appeal; qualification of officers; hearing and decision.** (1) The Environmental Quality Commission shall delegate on such general conditions as it may find appropriate the power to grant variances to special variance officers appointed by the Director of the Department of Environmental Quality. Decisions of the variance officers to grant varian-

ces may be appealed to the Environmental Quality Commission.

(2) Variance officers appointed under this section shall be persons qualified in soil sciences and possessing knowledge of and experience in subsurface sewage disposal methods.

(3) Each request for a variance under ORS 454.657 shall be heard by the appropriate variance officer in the county within which the parcel of real property described in the variance request is located.

(4) Each request for a variance shall be heard by the appropriate variance officer within 30 days after the date on which a completed application for a variance has been received by the Department of Environmental Quality. A decision shall be made by the variance officer within 45 days after completion of the hearing on the variance request. [1975 c.309 §3]

**454.662 Variance fee; low income elderly exemption; refund.** (1) Except as provided in subsection (2) of this section, each application for a variance submitted pursuant to ORS 454.657 must be accompanied by a nonrefundable fee, the amount of which shall be determined by a fee structure adopted by rule of the Environmental Quality Commission but not to exceed \$225 per application. The moneys received are continuously appropriated to meet administrative expenses of the hearings.

(2) Notwithstanding subsection (1) of this section, an applicant for a variance under this section is not required to pay the nonrefundable fee specified in subsection (1) of this section if, at the time of filing the application, the applicant:

(a) Is 65 years of age or older;

(b) Is a resident of this state; and

(c) Has an annual household income, as defined in ORS 310.630, of \$15,000 or less.

(3) Notwithstanding subsection (1) of this section, the department or its contract agent may refund a fee collected under subsection (1) of this section if the applicant withdraws the application before the department or its contract agent has commenced field work or any other substantial work associated with the application. [1975 c.309 §4; 1979 c.591 §1]

**454.665 Inspection of completed construction; certificate of satisfactory completion; appeal from denial of certificate.** (1) Upon completing the construction for

which a permit has been issued under ORS 454.655, the permit holder shall notify the Department of Environmental Quality. The department may at its own election inspect the construction to determine if it complies with the rules of the Environmental Quality Commission. For that construction inspected by the department, the department shall issue a certificate of satisfactory completion to the permit holder unless the construction does not comply with such rules. If the construction does not comply with such rules, the department shall notify the permit holder and shall require satisfactory completion before issuing the certificate. Failure to meet the requirements for satisfactory completion within a reasonable time constitutes a violation of ORS 454.605 to 454.745.

(2) If the inspection authorized under subsection (1) of this section is not made within seven days after notification by the permit holder, a certificate of satisfactory completion shall be considered to have been issued. When feasible the department shall notify the party whose work is to be inspected, whether the department will be able to make such inspection within the seven-day requirement of this subsection.

(3) No person shall operate or use any subsurface sewage disposal system, alternative sewage disposal system or part thereof unless a certificate of satisfactory completion has been issued for the construction for which a permit was issued under ORS 454.655.

(4) Whenever the department refuses to issue a certificate of satisfactory completion pursuant to this section, the permit holder may appeal the decision in accordance with the provisions of ORS 183.310 to 183.500.

[1973 c.835 §214; 1975 c.167 §6; 1979 c.169 §1]

**454.675 Exemptions; application to alteration, repairs or extensions.** Subsurface sewage disposal systems, alternative sewage disposal systems or nonwater-carried sewage disposal facilities or parts thereof which were constructed prior to January 1, 1974, but which are not creating a public health hazard or causing water pollution shall not be required to conform to the rules adopted subsequent to their initial construction. However, all alterations, repairs or extensions of such systems or facilities or parts thereof shall be made in accordance with the rules of the Environmental Quality Commission. [1973 c.835 §215; 1975 c.167 §7]

**454.685 Order limiting or prohibiting construction; factors to be considered.** (1) Whenever the Environmental Quality Commission finds that the construction of subsurface sewage disposal systems, alternative sewage disposal systems or nonwater-carried sewage disposal facilities should be limited or prohibited in an area, it shall issue an order limiting or prohibiting such construction. The order shall be issued only after public hearing for which more than 30 days' notice is given. Notice must be in form reasonably calculated to notify interested persons in the affected area.

(2) In issuing an order authorized by subsection (1) of this section, the commission shall consider the following factors for the proposed affected area:

(a) Present and projected density of population.

(b) Size of building lots.

(c) Topography.

(d) Porosity and absorbency of soil.

(e) Any geological formations which may adversely affect the disposal of sewage effluent by subsurface means.

(f) Ground and surface water conditions and variations therein from time to time.

(g) Climatic conditions.

(h) Present and projected availability of water from unpolluted sources.

(i) Type of and proximity to existing domestic water supply sources.

(j) Type of and proximity to existing surface waters.

(k) Capacity of existing subsurface sewage disposal systems. [1973 c.835 §216; 1975 c.167 §8]

**454.695 License required to perform sewage disposal services; application; permit required for certain services.** (1) Except as provided in subsection (3) of this section, no person shall perform sewage disposal services or advertise or represent himself as being in the business of performing such services without first obtaining a license from the Department of Environmental Quality.

(2) Application for a license required by subsection (1) of this section shall be made in writing in a form prescribed by the department and shall include the following information:

(a) The name and address of the applicant and of the person responsible for supervising the services;

(b) The location of the business of the applicant and the name under which the business is conducted; and

(c) Such other information as the department considers necessary to determine the eligibility of the applicant for the license.

(3) Any person licensed under the provisions of this section or under ORS 447.010 to 447.140 may install building sewers after obtaining a permit for plumbing inspection under ORS 447.095.

(4) Application for a license required under subsection (1) of this section must be accompanied by the nonrefundable license fee prescribed in ORS 454.745 and by the bond described in ORS 454.705.

(5) Unless suspended or revoked at an earlier date, all licenses issued under this section expire on July 1 next following the date of issuance. [1973 c.835 §217; 1977 c.828 §2]

**454.705 Bond; content; action on bond; limit on surety's liability; notice of bond.** (1) An applicant for a license required by ORS 454.695 shall execute a bond in the penal sum of \$2,500 in favor of the State of Oregon. The bond shall be executed by the applicant as principal and by a surety company authorized to transact a surety business within the State of Oregon as surety.

(2) The bond shall be filed with the Department of Environmental Quality and shall provide that:

(a) In performing sewage disposal services, the applicant shall comply with the provisions of ORS 454.605 to 454.745 and with the rules of the Environmental Quality Commission regarding sewage disposal services; and

(b) Any person injured by a failure of the applicant to comply with ORS 454.605 to 454.745 and with the rules of the commission regarding sewage disposal services shall have a right of action on the bond in his own name, provided that written claim of such right of action shall be made to the principal or the surety company within two years after the services have been performed; and

(c) The maximum aggregate liability of the surety on the bond shall be \$2,500.

(3) Every person licensed pursuant to ORS 454.695 shall deliver to each person for whom he performs services requiring such license,

prior to the completion of such services, a written notice of the name and address of the surety company which has executed the bond required by this section and of the rights of the recipient of such services as provided by subsection (2) of this section. [1973 c.835 §218; 1975 c.171 §1]

**454.715 Suspension or revocation of license.** Subject to ORS 183.310 to 183.500, the Department of Environmental Quality at any time may suspend or revoke any license issued pursuant to ORS 454.695 if it finds:

(1) A material misrepresentation or false statement in the application for the license.

(2) Failure to comply with the applicable provisions of this chapter.

(3) Violation of any rule of the Environmental Quality Commission regarding sewage disposal services. [1973 c.835 §219]

**454.725 Contracts with local governments; disbursement of fees to local governments.** (1) The Department of Environmental Quality may enter into agreements with local units of government for the local units to perform the duties of the department under ORS 454.635, 454.655, 454.665 and 454.695.

(2) If a fee is collected by a local unit of government performing duties under subsection (1) of this section, the department may disburse all or part thereof to the local unit.

(3) The Department of Environmental Quality may enter into agreements with local units of government when the local units so request for the local units to perform the variance duties of the department under ORS 454.657 and 454.660 subject to variance criteria specified in the agreement by the department. Each county performing variance duties under an agreement may set and collect a nonrefundable variance application fee as provided in ORS 454.662. A fee collected by a county under this subsection shall not exceed the county's cost of performing the variance duties of the department. [1973 c.835 §219a; 1975 c.167 §9; 1975 c.309 §5; 1979 c.591 §3]

**454.735 Designation of local official to receive applications and fees.** The Department of Environmental Quality shall designate an appropriate official in each county who shall be authorized to receive applications and fees required by ORS 454.605 to

454.745. Such receipt shall be considered the official receipt of the application by the department. [1973 c.835 §219b]

**454.745 Permit, service and license fees; maximum fees; refund.** (1) Fees, not exceeding the following amounts, are established for services rendered and for permits and licenses issued under ORS 454.655 and 454.695 in accordance with the following schedule:

Subsurface or Alternative Sewage Disposal System	Maximum Fee
New Site Evaluation; first lot.....	\$120
Each additional lot evaluated while on site.....	\$100
Construction Installation Permit (with favorable evaluation report).	\$40
Alteration Permit.....	\$25
Repair Permit.....	\$25
Extension Permit.....	\$25
Sewage Disposal Service	
Business License.....	\$100
Pumper Truck Inspection.....	\$25
Evaluation of Existing System Adequacy.....	\$40
Annual Evaluation of Alternative System (where required).....	\$40
Annual Evaluation of Temporary Mobile Home.....	\$25

(2) No fee shall be charged for an evaluation report requested on any proposed repair, alteration or extension of an existing subsurface sewage disposal system, alternative sewage disposal system or part thereof.

(3) Notwithstanding any other provision of this section, no contract provided for under ORS 454.725 shall be entered into or continued when the total amount of fees collected by the local unit of government exceeds the total cost of the program for providing the services rendered and permits and licenses issued under this section.

(4) Notwithstanding the maximum fees established in subsection (1) of this section, the Environmental Quality Commission, upon request of the director or of any county which pursuant to ORS 454.725 has entered into an agreement with the Department of Environmental Quality, may by rule increase maximum fees effective July 1, 1980, above the maximum levels established in subsection (1) of this section. Fee increases permitted by the commission shall be based upon actual costs for efficiently conducted minimum services as developed by the director or contract county.

In addition to the fees listed in subsection (1) of this section, with approval of the Environmental Quality Commission, any agreement county may adopt fee schedules for services related to this program which are not specifically listed in subsection (1) of this section.

(5) Notwithstanding the requirements of subsection (3) of ORS 454.655, the department or its contract agent may refund a fee accompanying an application for a permit pursuant to ORS 454.655 or for a report pursuant to ORS 454.755 if the applicant withdraws his application before the department or its contract agent has done any field work or other substantial review of the application. [1973 c.835 §220; 1974 s.s. c.30 §3; 1975 c.167 §10; 1975 c.607 §33; 1979 c.591 §2]

**454.755 Fees for certain reports on sewage disposal.** (1) Any person, upon application for any of the following actions by the Department of Environmental Quality, shall pay to the department a nonrefundable fee in the amount required under subsection (2) of ORS 454.745 for each lot or parcel:

(a) A report of evaluation of a method of sewage disposal, as required pursuant to ORS 92.445; or

(b) A report of evaluation of site suitability for a subsurface sewage disposal system, alternative sewage disposal system or a part thereof, pursuant to ORS 454.655; or

(c) A report of evaluation of adequacy of a sewage disposal method required prior to the approval of a plat of a subdivision, pursuant to paragraph (c) of subsection (5) of ORS 92.090.

(2) Any person may request an evaluation report on any proposed repair, alteration or extension of an existing subsurface sewage disposal system, alternative sewage disposal system or part thereof, including but not limited to any repair, alteration or extension described in ORS 454.675. The department shall conduct such evaluation and issue a report of its findings without charge to the person requesting such evaluation.

(3) The fee paid for a report of evaluation of site suitability pursuant to paragraph (b) of subsection (1) of this section shall entitle the applicant to as many site inspections as is necessary within 90 days from the date of the first site inspection to determine site suitability for a single home site. The department may require separate fees if it determines that the

site inspections are for the purpose of determining site suitability for more than one home site. [1974 s.s. c.30 §2; 1974 s.s. c.74 §4; 1975 c.167 §11; 1975 c.607 §34]

### ONSITE DISPOSAL ALTERNATIVES

**454.775 Policy.** It is the public policy of the State of Oregon to encourage development and application of alternatives to the septic tank and drainfield system for onsite disposal of sewage consistent with protection of the public health and safety and waters of the state. [1979 c.189 §1]

**454.780 Recirculating sand filter permitted; commission rules.** Notwithstanding ORS 454.615, the Environmental Quality Commission shall adopt rules permitting the installation of the recirculating sand filter, or variations thereof, as a standard alternative to the septic tank and drainfield, not later than January 1, 1980. Such rules shall provide standards for construction, installation, maintenance and periodic inspection of such systems, consistent with the public health and safety and protection of the waters of the state. [1979 c.189 §2]

**454.785** [1974 s.s. c.30 §4; repealed by 1975 c.309 §6]

### CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,  
October 1, 1979.

Thomas G. Clifford  
Legislative Counsel

### CHAPTER 455 [Reserved for expansion]

